

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TODD KREISLER,

Civil Action No. 10 CV 7592

Plaintiff,

-against-

**ANSWER**

SECOND AVENUE DINER CORP.  
a New York corporation, d/b/a PLAZA DINER,  
and J.J.N.K. CORP., a New York corporation,

Defendants.

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Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. by their attorney, PAUL STAMATELATOS, ESQ., answering the Complaint state upon information and belief as follows:

**JURISDICTION AND PARTIES**

1. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 1.
2. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 2.
3. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 3.
4. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. admit the allegations in paragraph 4.
5. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 5.

**COUNT I – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

6. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. are without knowledge or information to form a belief as to the truth of the allegations in paragraph 6.

7. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 7.

8. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 8.

9. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 9.

10. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 10.

11. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 11.

12. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. are without knowledge or information to form a belief as to the truth of the allegations in paragraph 12.

13. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 13.

14. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 14.

15. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 15.

16. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 16.

**COUNT II – VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

17. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. are without knowledge or information to form a belief as to the truth of the allegations in paragraph 17.

18. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 18.

19. As to paragraph 19 defendants repeat each and every response to paragraphs 1 through 16 with the same force and effect as if fully set forth at length herein.

### **COUNT III – VIOLATIONS OF THE NEW YORK STATE HUMAN RIGHTS LAW**

20. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. are without knowledge or information to form a belief as to the truth of the allegations in paragraph 20.

21. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 21.

22. As to paragraph 22 defendants repeat each and every response to paragraphs 1 through 19 with the same force and effect as if fully set forth at length herein.

### **ATTORNEYS' FEES AND COSTS**

23. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 23.

### **DAMAGES**

24. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 24.

### **INJUNCTIVE RELIEF**

25. Defendants, SECOND AVENUE DINER CORP. d/b/a PLAZA DINER and J.J.N.K CORP. deny the allegations in paragraph 25.

### **FIRST AFFIRMATIVE DEFENSE**

26. The Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

27. All allegations pertaining to jurisdiction are denied and strict proof thereof demanded at the trial of this case.

**THIRD AFFIRMATIVE DEFENSE**

28. It is averred that at all times concerned with this litigation, the answering defendants acted in a manner that was proper, reasonable, lawful, and in the exercise of good faith.

**FOURTH AFFIRMATIVE DEFENSE**

29. Plaintiff has failed to exhaust appropriate state remedies.

**FIFTH AFFIRMATIVE DEFENSE**

30. Defendants did not discriminate against plaintiff because providing the reasonable accommodations that plaintiff requested would have caused defendants to suffer an undue hardship.

**SIXTH AFFIRMATIVE DEFENSE**

31. Defendants assert that at all relevant times they made a good faith effort, in consultation with Plaintiff, to reasonably accommodate him, to the extent he informed defendants that such accommodations were needed, and to the extent such accommodations would not cause an undue hardship to the operation of the business.

**SEVENTH AFFIRMATIVE DEFENSE**

32. The defendants at all times relevant hereto, acted under the reasonable belief that their actions were in accordance with federal and state laws. At no time relevant hereto did any of the defendants act in contravention of clearly established federal or statutory or constitutional rights of the plaintiff of which a reasonable person should have known.

**EIGHTH AFFIRMATIVE DEFENSE**

33. That the removal of structural and architectural barriers are not readily achievable.

WHEREFORE, Defendants hereby demand judgment dismissing the Complaint and granting such other relief as this Court may deem just and proper, together with attorney's fees and the costs and disbursements of this action.

Dated: Astoria, New York  
November 26, 2010

Respectfully submitted,

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